

Application No. 10/707,236
Amendment date December 2004
Reply to Office Action of September 21, 2004

REMARKS and ARGUMENTS

Applicants have amended the claims to more particularly point out and distinctly claim Applicants' invention. Claim 1 as amended requires that both the fixed and second loops are formed in the flexible strap itself.

(1) Claim 1 had been rejected under 35 USC 102(b) as anticipated by U.S. 5,209,712 (Ferri)

Ferri teaches an exercise apparatus that includes a flexible support member 20 in Fig. 1B, and user engagement members, such as the flexible sling of Fig. 1C or the hand or foot coupling members 60 or 80 of Fig. 1B and Fig. 1A. The flexible support member 20 is secured at end 24 to a structural support member (a ceiling or a wall) to safely support the user (column 51, lines 52-59). Releasable fittings 34 are used to secure the user engagement members to the flexible support member 20, either at an end 22 or at an intermediate attachment point 30.

The claimed exercise device as amended provides a flexible, inelastic strap having a **fixed loop formed in the strap at the first end**, and a connector assembly comprising a moveable member and a fixed member, where the connector assembly **forms a second loop in the strap** proximate the second end of the strap when the fixed member (that is attached to the second end of the strap) is connected to the movable member (that can be positioned along the length of the strap).

The flexible support member 20 of Ferri does not form a fixed loop at one end, or a second loop at the second end formed by the coupling of disconnectable connecting members. Ferri's positioning member 26 is moveable, but does not have connecting members that can be disconnected.

It appears that the Examiner is combining various elements from this reference shown in FIG. 1A and 1B to construct an embodiment that allegedly anticipates the Applicants' claimed invention. First, the reference describes that the flexible support member 20 is used by securement to a ceiling or a wall at one end. Ferri does not disclose or suggest the Applicants' invention, and actually teaches away from the use of the flexible member as described and claimed for stretching.

(2) Claims 2-8 had been rejected under 35 USC 103(a) as obvious in light of U.S. 5,209,712 (Ferri)

Here the Examiner states that the dimensions of Claims 2-8 are obvious design choices within the scope of the '712 reference.

In view of the arguments above that distinguish Claim 1 from Ferri, this rejection becomes moot.

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Nonetheless, Applicants traverse the rejection. Applicants' description states that the fixed loop of the present device is to be placed over a user's foot, leg, hand, or arm (paragraph 0015). In the instant case, the fixed loop must be of a size sufficient to fit over these body parts, whereby size is important. Applicants contend that the selection of design choices in Ferri are limited with respect to the connectors 22 and 24 of the flexible support member 20, and with respect to the connectors 34 of the user engagement members 50, 60, and 80, since it is not within the scope of Ferri to provide these members to fit over a leg, foot, hand, or arm.

(3) Claims 9-12 had been rejected under 35 USC 103(a) as obvious in light of U.S. 5,209,712 (Ferri) in view of U.S. 6,436,020 (Weingand))

The Examiner states that while the '712 reference does not disclose including instructions with the stretching device, the Weingand '020 reference does include instructions for assisting users with its pain-treating heated pad device.

In view of the arguments above that distinguish Claim 1 from Ferri, this rejection becomes moot.

Nonetheless, Applicants traverse the rejection. Applicants assert that the Examiner has failed to establish a *prima facie* case of obviousness. The Examiner must demonstrate some teaching or suggestion in the prior art that would motivate a person of ordinary skill in the art to combine these references. Here the '020 reference is cited for the inclusion of instructions only; the device disclosed in the '020 reference is a heated pad that attaches to the body for the treatment of pain. Ferri relates to a device for exercising and stretching. Applicants can see no overlap in the Field of Search or Classification index that would suggest that these are sufficiently related to combine them, and there is no teaching in Ferri to motivate one to combine these references for Applicants' claimed purpose. The burden is on the Examiner to point out any such teaching or suggestion in the art. Absent a *prima facie* obviousness rejection, it is impermissible for the Examiner to cite prior art in combination with only the hindsight of Applicants' disclosure.

(4) Prior Art Made of Record and Not Relied Upon

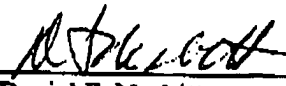
The Examiner also cited 3 references, U.S. 5,291,903, U.S. 5,807,218, and U.S. 5,518,486, as pertinent to Applicant's disclosure. However, none of these references either anticipate or render obvious Applicants' claimed invention.

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Applicants respectfully request allowance of the application.

Respectfully submitted,

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